This witness is therefore of no help in deciding what exactly the parties had agreed to.

The last witness Ng Cheok speaking of the making of the oral contract said " Gee Jin told the defendant if she (Han Gor) did not appear he was willing to pay any loss up to $1,000.' This witness gave no evidence of the conversation on the evening of the 18th.

While the defendant says he was to be paid some sum even if he made a profit, Ng Cheok says that it was only losses that were to be paid.

I have little doubt that on the 14th the defendant was to have some sort of *quid pro quo* arising out of Han Gor's condition but the evidence does not enable me to say what the agreement was. It is all too indefinite, and reverting to the words of Lord Moulton already quoted:—

> " such collateral contracts, the sole effect of which is to vary or add to the terms of the principal contract, are therefore viewed with suspicion by the law. They must be proved strictly. Not only the terms of such contract but the existence of an *animus contrahendi* on the part of all the parties to them must be clearly shewn."

I am therefore of opinion that the defendant had not succeeded in discharging the onus which was upon him of proving a contract which the Court can enforce.

The amount $650 sued on is admitted to be due. I therefore dismiss the counterclaim and give judgment for the plaintiff for $650 and costs.

Judgment accordingly.

Solicitors for the Plaintiff—
Aubrey Davies & Co.

Solicitors for the Defendant—
Claude da Silva & Co.

[ORIGINAL CIVIL JURISDICTION]

WHITLEY, J.

December 12, 1936.

IN THE MATTER OF ORDINANCE No. 135 (MUNICIPAL) AND OF THE SINGAPORE IMPROVEMENT ORDINANCE 1927

AND

IN THE MATTER OF THREE ORDERS OF THE GOVERNOR-IN-COUNCIL.

ALKAFF & COMPANY v. SIR SHENTON THOMAS AND OTHERS.

[SINGAPORE ORIGINATING MOTION No. 14 of 1935.]

Writs of Certiorari—Backlane Orders—Report by Commissioner of Lands—Allegations of Bias.

The Commissioner of Lands is an *ex officio* member of the Singapore Improvement Trust. Upon application made by the Singapore Improvement Trust, the Governor-in-Council appointed the Commissioner of Lands to enquire and report on three back-lane proposals made by the Singapore Improvement Trust under s. 144 sub-s. 1 of Ordinance No. 135 (Municipal) and s. 2 sub-s. 2 of the Singapore Improvement Ordinance. That officer enquired and reported and subsequently the Governor-in-Council made three several backlane orders. Applications were thereupon made by the applicants for a writ or writs of *certiorari* to quash such three backlane orders.

Held: 1. It is not necessary that each such order should be the subject matter of separate proceedings for *certiorari*. If different respondents were injuriously affected by improper joinder, they could apply to have their cases heard separately.

2. That the orders could properly be made personally against the Governor and the Officer Administering the Government respectively.

3. That in making each order the Governor-in-Council was performing *quasi*-judicial functions.

4. That justice must not only be done but must also seem to be done; but when bias is alleged the position of administrative bodies exercising *quasi*-judicial functions differs from cases of decisions by truly judicial tribunals. The Court ought to be slow to interfere with the former, but in the latter ought to interfere on much slighter grounds. Also where the interest is not pecuniary the question arises whether the interest is of such a substantial character as to make it likely that the judicial body has a real bias in the matter; a mere possibility of bias is not sufficient. That which has to be considered is the effect likely to be produced upon the minds of the public as to the fairness of the administration of justice; and the possibility of bias is a question of degree to be decided in each case.

5. That there was no reasonable ground in substance and in fact for suspecting any real bias in the Commissioner of Lands.

6. That so long as the Commissioner of Lands acted without bias and gave to each party the opportunity of adequately presenting their case, the Commissioner of Lands was not bound to hear owners orally.

ORIGINATING MOTION.

The applicants Messrs. Alkaff & Co. applied by way of Originating Motion for writs of *certiorari* to bring up three orders made by the Governor-in-Council under section 144 of Ordinance No. 135 (Municipal) and quash such orders. Two of the orders had been made by Sir Andrew Caldecott, (the Officer Administering the Government of the Straits Settlements during the absence on leave of the Governor H. E. Sir Thomas Shenton Thomas) and the third order had been made by the Governor H. E. Sir Thomas Shenton Thomas after his return from leave. In each case an application had been made by the Singapore Improvement Trust (under section 144 of Ordinance No. 135 (Municipal) and section 2, subsection 2 of the Singapore Improvement Ordinance, 1927) requesting the Governor-in-Council to order that a backlane be laid out. In each case the Governor-in-Council (or the Officer Administering the Government, as the case may be), had referred the matter to the Commissioner of Lands for enquiry and report under section 144, subsection 1 of Ordinance No. 135 (Municipal). By section 5, subsection 2 (d) of the Singapore Improvement Ordinance, 1927 (as amended by the Singapore Improvement (Amendment) Ordinance, 1930) the Commissioner of Lands is an *ex officio* Trustee of

the Singapore Improvement Trust. The Commissioner of Lands enquired and reported; and thereafter the Governor-in-Council (or the Officer Administering the Government, as the case may be) made a backlane order under section 144, subsection 1 of Ordinance No. 135 (Municipal) in each of the three cases. Objection was taken by the Applicants to the reports of the Commissioner of Lands on the ground of bias and also on the ground that he had not complied with the requirements of natural justice in making his enquiries and reports. The applicants moved *ex parte* and on their application a rule was made against Sir Andrew Caldecott, Sir Shenton Thomas and Mr. W. S. Ebden the Commissioner of Lands calling on them to shew cause why a writ or writs of *certiorari* should not issue to bring up and quash the three orders. The Governor and the Officer Administering the Government appeared to show cause, but upon the matter coming on for hearing Counsel for the applicants (Messrs. Alkaff & Co.) informed the Court that they did not wish to proceed further against Mr. W. S. Ebden, the Commissioner of Lands.

Laycock and *Ong* for H. E. Sir Thomas Shenton Thomas and Sir Andrew Caldecott showed cause against the rule.

Mundell and *Battishill* in support of the rule.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

WHITLEY, AG. C.J.—In this Originating Motion application is made for the issue of a writ of *certiorari* directed to His Excellency Sir Thomas Shenton Whitelegge Thomas, K.C.M.G., O.B.E., Governor of the Straits Settlements, Sir Andrew Caldecott, C.M.G., C.B.E., at all material times the Officer Administering the Government of the Straits Settlements and Mr. W. S. Ebden, at all material times the Commissioner of Lands of the Straits Settlements, calling upon them to show cause why three Orders of the Governor-in-Council each made under section 144 of Ordinance No. 135 (Municipal) and section 2 (3) of the Singapore Improvement Ordinance 1927 should not be removed into the High Court and quashed on grounds which I will deal with later.

At an early stage in the hearing Mr. Mundell, who appeared for the Applicants, intimated that they no longer asked for any order as against Mr. Ebden.

Section 144 (1) of the Municipal Ordinance (section 148 (1) of Chapter 133 in the New Laws) provides as follows:—

> The Governor-in-Council may, at any time on the request of the Commissioners, after receiving such report as he thinks fit to call for from an officer appointed to inquire and report in each case, order that a back-lane, with approaches thereto, if necessary, of a width not exceeding twenty feet shall be laid out through any lands, and that the lands specified in the order may be acquired by the Commissioners for the purpose of providing such back-lane and approaches, if any.

The Singapore Improvement Ordinance 1927, which is an Ordinance to provide for the improvement of the Town and Island of Singapore, came into force on the 1st July 1927. By section 4 of the Ordinance a Board called the Singapore Improvement Trust is created and in that Board is vested the duty of carrying out the provisions of the Ordinance. The Ordinance goes on to provide the Board with various powers and section 2 (3) by substituting the Singapore Improvement Trust for the Commissioners vests in the Board the power of instituting schemes for back-lanes which had formerly been exercised by the Commissioners.

The procedure which has been followed in applying the provisions of these sections appears from the affidavit of Mr. Ebden. For a very many years it has been the practice that any report which the Governor-in-Council might require under subsection (1) of section 144 has been, at the direction of the Governor-in-Council, supplied in Singapore by the Commissioner of Lands and by no one else. That practice continued after the coming into force of the Singapore Improvement Ordinance which entrusted to the Improvement Trust the initiation of all such back-lane schemes. At first the Board of the Improvement Trust did not include the Commissioner of Lands among its members but in 1930 the Singapore Improvement Trust Ordinance was amended so as to include the Commissioner as an *ex-officio* member of the Board. After this amendment the practice was continued of calling on the Commissioner of Lands to furnish the reports on back-lane schemes required by the Governor-in-Council. Since the 1st April 1929, 91 such reports have been called for and supplied and prior to these proceedings no objection has been raised to the Commissioner of Lands furnishing such reports.

The practice of the Improvement Trust in connection with the preparation of back-lane schemes has been that the technical staff of the Trust prepare the scheme, which is then placed before the Chairman. If he approves, it is then circulated among the members of the Board. If the members approve it, it is formally passed at the next meeting of the Board and is then submitted to the Governor-in-Council with a request that an Order be made by him in accordance with the scheme. This practice was carried out in the three cases which are the subject of this Originating Motion. In no case has Mr. Ebden since he became Commissioner of Lands in 1932 taken any personal part in the preparation of the schemes

apart from that involved in the procedure which I have just outlined.

When called upon by the Governor-in-Council to enquire and report Mr. Ebden's practice has been to give notice to the owners of all lands affected by the scheme by sending them a letter informing them that the application has been referred to him for report; that he is prepared to hear objections on or before a specified date; and that a plan showing the proposals of the Improvement Trust is open to inspection at the Land Office. He then receives orally or in writing any observations put forward by the owners and makes thereon such further enquiries as he thinks necessary. When he considers that these enquiries have placed him in a position to make a report, he does so, sending with the report to the Governor-in-Council a summary of all objections and relevant documents and of the remarks thereon of the Manager of the Improvement Trust. It has been the practice of Mr. Ebden (as of his predecessors) to include in the report his own recommendations as to the scheme, although the instructions received by him from the Governor-in-Council do not require such a recommendation and the decision is in fact and in law made not by him but by the Governor-in-Council. The Governor-in-Council, when making his decision, thus has before him a summary of objections and of all documents relevant thereto, the remarks of the Manager of the Improvement Trust and the recommendations of Mr. Ebden. His recommendations have sometimes involved a modification of the original proposals of the Improvement Trust.

In the case of each of the three Orders which are the subject of these proceedings the various steps leading up to the making of the Orders by the Governor-in-Council were substantially in accordance with the foregoing procedure.

The Orders were made on the 24th October 1934, the 7th November 1934, and the 14th November 1934.

On the 26th November 1934 Messrs. Sisson and Delay, solicitors for the Applicants, wrote to the Commissioner of Lands asking to be informed what procedure he adopted when carrying out the provisions of section 144 and whether they could be supplied with copies of the reports made by him to the Governor-in-Council on the subject of these three back-lane schemes.

After further correspondence with the Commissioner and the Colonial Secretary Messrs. Sisson and Delay on the 14th February 1935 wrote to the Colonial Secretary informing him that they had been instructed by the Applicants to take proceedings against the Governor-in-Council and Mr. Ebden. On the 13th May 1935 Notice of Motion was filed and on the 11th June 1935 an Order was made calling upon the Respondents to show cause why the three Orders of the Governor-in-Council should not be quashed on the grounds that each of them was *ultra vires* and made in contravention of the Municipal Ordinance and the Singapore Improvement Ordinance by reason of the facts set out in the Motion Paper.

Before proceeding to a consideration of these grounds I will deal with certain preliminary objections taken by Mr. Laycock on behalf of the Respondents.

He contended firstly that each Order ought to have been made the subject of a separate Motion. He pointed out that there are different grounds of complaint against each Order, involving different causes of action, and that in each case the defences must be different. That being so he argues that if a Writ of *Certiorari* is to issue there should be a separate Writ in respect of each Order. I can see no substance in this objection. In the first place the Applicants are the owners of all the property affected by these proceedings and it has not been shewn that any prejudice to the Respondents has arisen from the fact that there is only one Order to show cause. The principles upon which objection is taken to the making of the Orders are the same in each case; the only differences in the grounds upon which the respective Orders are attacked lie in matters of detail. In certain circumstances it might reasonably be objected that where, as here, there are different respondents each of them should be entitled to have his case heard separately but no complaint has been made in that respect; nor would one expect any such complaint inasmuch as the present respondents are not being attacked in their personal capacities but only in their official capacities as respectively Governor and Officer Administering the Government.

I would go further and express the opinion that if there had been three separate applications and three Orders to show cause the Court would probably have lent a favourable ear to any application that the three motions should be consolidated and heard together. Finally it is to be observed that the form of the Order to show cause would appear to have left it open to each respondent to have applied to have his case heard separately and no such application has been made. The case of *Reg.* v. *The Justices of Great Yarmouth*, 8 Q.B.D. 525 is authority for showing that the Applicants were justified in proceeding as they did, for in that case a single rule was obtained for *certiorari* in respect of five distinct decisions of the justices.

Mr. Laycock's next objection was that the proceedings are not properly constituted in that the Orders having been made by the Governor-in-Council and not by the Governor, all those who took part in the making of each Order should have been made Respondents. He admitted that he

could find no precedent for making the members of an Executive Council respondents to an application such as this but he argued that as there is clearly a distinction between "the Governor" and "the Governor-in-Council" and these Orders were made by the Governor-in-Council it cannot be sufficient merely to make the Governor respondent without in some way or other joining the members of the Council who must also be responsible. There would be considerable force in that argument if the Orders had been made by the Executive Council but they were not. The words used in section 144 are " Governor-in-Council " and the reason for that wording is to be found in Instruction XIV of the Instructions passed under the Royal Sign Manual dated the 18th August 1924 which empowers the Governor to act in opposition to the advice given to him by the Members of the Executive Council if he shall in any case deem it right to do so. It is accordingly the Governor-in-person who decides every question put to the Executive Council; the final decision rests with him and with him alone. It is in his capacity as Governor and not in any representative capacity that he signs any Order made by him in Council and it follows that he is the person responsible and as such the proper person to be made respondent. Precedent for suing the Governor of a Crown Colony is to be found in the case of *De Verteuil* v. *Knaggs*, (1918) A.C. 557 and for suing the Officer Administering the Government in *Eshugbayi Eleko* v. *The Officer Administering the Government of Nigeria*, (1931) A.C. 662. It is difficult to see how the Executive Council could be sued as such. It is not a legal entity. It is a part of the body politic created by Article VII of the Letters Patent dated the 30th December 1931. Mr. Laycock could adduce no case in which a body politic has been sued *eo nomine*.

The Executive Council being merely an advisory body, whose advice the Governor can either accept or disregard, it follows in my opinion that the Governor himself is the proper person to be sued when the subject considers himself aggrieved by the making of any Order by the Governor-in-Council.

The third preliminary point taken by Mr. Laycock was that a writ of *certiorari* cannot properly issue inasmuch as the making of each of these Orders was a purely administrative or ministerial act and not in any sense a judicial act. Normally of course a writ of *certiorari* is directed to a Court but it is now well settled that such writs may also issue to bodies or functionaries which are not Courts in any ordinary sense, but which are exercising or have a duty to exercise functions of a judicial or quasi-judicial character. In *Rex* v. *Electricity Commissioners*, (1924) 1 K.B. at page 204 Atkin, L.J. after pointing out that the writs of prohibition and *certiorari* are of great antiquity, forming part of the process by which the King's Courts restrained Courts of inferior jurisdiction from exceeding their powers proceeded as follows:—

" Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; *certiorari* requires the record or the order of the court to be sent up to the King's Bench Division, to have its legality inquired into, and, if necessary, to have the order quashed. It is to be noted that both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a Court of Justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognized as, Courts of Justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

In *Rex* v. *Local Government Board*, 10 Q.B.D. at page 321 Brett, L.J. observed:—

" My view of the power of prohibition at the present day is that the Court should not be chary of exercising it, and that wherever the Legislature entrusts to any body of persons other than to the superior Courts the power of imposing an obligation upon individuals, the Courts ought to exercise as widely as they can the power of controlling those bodies of persons if those persons admittedly attempt to exercise powers beyond the powers given to them by Act of Parliament." The same principles must apply to *certiorari*. In the *Electricity Commissioners'* case Bankes, L.J. at page 194 quotes with approval the dictum of Fletcher Moulton L.J. in *Rex* v. *Woodhouse*, (1906), 2 K.B. at page 535 where he is discussing what, in his opinion, constitutes a judicial act. He there says:—

" The procedure of *certiorari* applies in many cases in which the body whose acts are criticized would not ordinarily be called a Court, nor would its acts be ordinarily termed 'judicial acts.' The true view of the limitation would seem to be that the term 'judicial act' is used in contrast with purely ministerial acts. To these latter the process of *certiorari* does not apply, as for instance to the issue of a warrant to enforce a rate, even though the rate is one which could itself be questioned by *certiorari*. In short there must be the exercise of some right or duty to decide in order to provide scope for a writ of *certiorari* at common law."

Admittedly, if the making of each of these Orders was a purely ministerial act *certiorari* would not lie against the Governor for having

made them but, applying the principles laid down by the learned Judges in the passages which I have quoted, I have no hesitation in holding that when making each Order the Governor-in-Council was performing quasi-judicial functions.

Section 144, which I set out earlier in this Judgment and which gives him power to make such orders, provides in effect that on receiving the report of the officer appointed to inquire and report the Governor-in-Council *may* make an order. The terms of that section, in my opinion, clearly confer on the Governor-in-Council a discretion which involves the exercise of judicial functions. I am supported in this view by the case of *Hall* v. *Manchester Corporation*, 113 L.T.R., 465 which turned upon the construction of section 41 of the Manchester Corporation (Waterworks and Improvement) Act 1867 which provides that in every case where it is certified that a building is unfit for habitation the corporation *may* declare that the same is not fit for habitation and shall not be inhabited after a specified date, a penalty being imposed on anyone occupying the building after such date. In his judgment in the House of Lords Lord Dunedin said:—

> "I think that the expression "may" declare shows that there is imposed on the corporation a duty of consideration as to whether the facts bear out the allegation contained in the certificate. If the duty imposed was a purely ministerial duty I think the word would have been "shall." It is true that it is trite law that "may" in a statute may be equivalent to "shall." But each case must go on its own circumstances, and in my view all considerations of common sense point to the view I have expressed.....I think the corporation must set itself to the task in a judicial spirit...." In the same case at page 470 Lord Parker of Waddington said:—
>
> "The question then arises as to whether the power intrusted to the corporation is purely administrative or is a judicial power. On this point I have had considerable doubt, because there is no provision in the Act for hearing any party interested, or for receiving evidence, nor is there any provision for an appeal. But inasmuch as an order of the council under the section entails a penalty on persons who disregard it, I think on the whole that the corporation's power is in the nature of judicial power.....".

In the present case of course there is no question of the imposition of any monetary penalty but, as is shown by the objections raised to the three Orders under consideration, it is inevitable that the making of such an order must indirectly penalise the owner by infringing upon his normal right to enjoy the use of his property unfettered and without interference.

The fact of these objections having been raised by the owners also has a bearing upon the question whether the acts of the Governor-in-Council were ministerial or judicial in character as is shown in the recent case of *Errington* v. *Minister of Health*, 1935, 1 K.B. 249 where it was held that when a clearance to which no objection is raised by owners of property concerned comes before the Minister of Health for confirmation under the Housing Act, 1930, the Minister of Health acts as an administrative officer, but where objections are raised by owners of property in the area concerned the Minister, though not a Judge, exercises quasi-judicial functions in coming to his decision.

The facts in that case bear no analogy to those in the present case but it is useful as indicating that even though in the absence of any objections the making of the orders might have been regarded as a ministerial act, when once objections are raised and considered the functions of the Governor-in-Council under the section must be regarded as quasi-judicial. His act in making such an Order is clearly an act done by a competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others, and accordingly is a judicial act in respect of which *certiorari* will lie. See the judgment of Lord Atkinson in *Frome United Breweries Co.* v. *Bath Justices*, (1926) A.C. at page 602.

Mr. Laycock s three preliminary objections accordingly fail.

I will now consider the grounds upon which the Orders are attacked. They are set out in the Order to show cause as follows:—

> (1) That in the case of each of the Back Lane Schemes the subject of the said Orders of the Governor in Council the Officer appointed by the Governor in Council to enquire and report upon the proposal under Section 144 (1) of Ordinance No. 135 (Municipal) and Section 2 of the Singapore Improvement Ordinance 1927 ought to have been an impartial Officer.
>
> (2) That the Officer in fact appointed to wit the Honourable Mr. W. S. Ebden, the Commissioner of Lands, Straits Settlements, was not an impartial Officer in that he was then and at all material times a Member of the Singapore Improvement Trust and as such a party to the request to the Governor-in-Council (referred to in each of the said Orders) to make the said Orders.
>
> (3) The said Officer did not conduct the said enquiries or any of them in an impartial or judicial manner:
>
> (a) in that he did not hear the case for the Singapore Improvement Trust in the presence of the owners or their representative,

(b) in that he did not inform the owners of the objections of the Singapore Improvement Trust to the proposals of the owners and give the owners an opportunity of replying thereto.

(4) So far as the Order of the 24th October, 1934 is concerned that the said Officer did not appoint a time for the owners to appear before him and state their objections to the proposal, but, having received a letter from the owners' Solicitors, Messrs. Sisson & Delay dated the 21st August, 1934 stating the owners' objections to the proposal so far as the same affected Nos. 299 to 309 South Bridge Road, Singapore, and stating that if the submission and suggestions therein set out were not agreed to, the owners would like to have an opportunity of appearing before him with their Solicitor and Architect and explaining their attitude in connection with the proposed acquisition, the said Officer stated that he required no further statement from the owners and gave no opportunity to the owners to appear before him to support their case and to hear and reply to the case for the Singapore Improvement Trust.

(5) So far as the Order dated the 14th November, 1934 is concerned that the said Officer did not appoint a time for the owners to appear before him and state their objections to the proposal and to hear and answer the case for the Singapore Improvement Trust and that having received a letter dated the 25th September, 1934 from the Owners' Solicitors, Messrs. Sisson & Delay, stating the Owners' objections to the proposal, the said Officer did not reply to that letter prior to the Order of the Governor-in-Council or otherwise intimate to the Owners his intentions in the matter.

It will be observed that the first three grounds apply to all three Orders whilst the fourth and fifth grounds relate to additional complaints directed against the procedure of Mr. Ebden preparatory to making his reports in the cases of the first and third Orders respectively.

Before dealing with these grounds in detail it will be convenient to summarize shortly how Mr. Mundell puts the case for the Applicants. He contends that the powers conferred by Section 144 (1) on the Governor-in-Council are discretionary. If he chooses to exercise them he must have due regard to the rights of individuals. In the case of these Orders the complaint is that he disregarded those rights in that he appointed as the officer to inquire and report a person (Mr. Ebden) who was not free from a suspicion of bias in the minds of reasonable men and that those rights were further disregarded in that Mr. Ebden in fact acted as prosecutor and judge in each case and that in none of the three cases did he conduct his inquiry in accordance with the principles which justice requires to be observed in such cases.

It is well established that *certiorari* will lie against a bench of justices or other tribunal to quash its decisions if it can be shown that such tribunal was biassed or interested. The present case, however, differs from most of the cases in which bias has been alleged against a tribunal in that here the bias is not alleged against the Governor-in-Council who made the decisions complained of but against Mr. Ebden who merely inquired and reported on the scheme and who had no power to make any decision himself. Mr. Mundell sought to overcome this obstacle by submitting that the position is to a certain extent analogous to that which obtained in the line of cases in which it has been held that where the clerk to the justices is interested professionally in the subject matter of the dispute or, matters arising out of it, his sitting with the justices, or retiring with them when they consider their decision, may make it appear that justice is not being done, and the justices' decision may accordingly be quashed. The fact that the magistrate's clerk is a member of the firm of solicitors which is acting for one of the parties in the proceedings before the magistrates raises a reasonable likelihood of bias on the part of the clerk and *certiorari* will be granted to quash the justice's decision even though the clerk did not give advice and influence them or did not in fact know of his firm's connection with the matter, the Court acting on the fundamental principle that justice should not only be done to be done [See *Rex* v. *Sussex Justices*, (1924) 1 K.B. 256, and *Rex* v. *Essex Justices*, (1927) 2 K.B. 475]. In *Brook* v. *Earl Rivers*, 145 English Reports 569, it was held that where a judge had an interest neither he nor his deputy could determine a cause in his court and from the ruling in *Rex* v. *Cambridge Justices*, 120 English Reports 238, it would appear that the disqualification of his deputy on account of bias might disqualify a recorder.

Applying the principles which emerge from these cases Mr. Mundell argued firstly that Mr. Ebden took such a part in the proceedings as would have rendered him incapable of sitting on the bench if he had been a justice and that for that reason the Governor-in-Council ought not to have appointed him; secondly that, just as bias on the part of a justice's clerk is a ground for attacking a decision of the justices, similarly bias on the part of Mr. Ebden who admittedly submitted his recommendations to the Governor-in-Council should invalidate the Orders made by the Governor-in-Council; and thirdly that Mr. Ebden, being in the position of a deputy appointed

to make enquiry and report, any disqualification of him on the ground of bias would extend to invalidate the orders made as the result of or following upon such report. Now if Mr. Ebden had been a member of the Executive Council or had attended its meetings in an advisory capacity the analogy would have been a reasonably strong one but he was not present at the deliberations of the Governor-in-Council and accordingly his power to influence falls far short of that of the justice's clerk who retires with the justices, takes a leading part in their deliberations and, being in most cases the only trained lawyer present, is naturally looked to for guidance by a body of laymen. Nevertheless, I think it is not unreasonable to take the view that if Mr. Ebden was in fact biassed such bias on his part would, so to speak, infect to some extent the proceedings and decision of the Governor-in-Council who would naturally attach considerable weight to his report and recommendation.

It thus becomes necessary to consider the law as to bias as a ground for invalidating a decision and then to ascertain how far, if at all, the circumstances of the present case, as disclosed by the affidavits, establish any such bias against Mr. Ebden. Mr. Mundell made it quite clear that he has never suggested any conscious bias on the part of Mr. Ebden; the highest he puts his case on this point is that in view of his being at the same time a member of the Board of the Improvement Trust which submitted the scheme and the Commissioner of Lands who supplied the report some unconscious bias was inevitable.

The rule which disqualifies any person from acting as a judge in a matter where he may have an interest therein has been considered in a large number of cases the majority of which turn upon the positions of justices sitting on the magisterial bench in England. The basis of the rule is the principle *nemo debet esse judex in causa propria sua.* The smallest pecuniary interest is, subject to any statutory authority to the contrary, a bar to the justice acting but where the interest is not pecuniary the question arises whether the interest is of such a substantial character as to make it likely that he has a real bias in the matter [See *Reg.* v. *Handsley,* (1881) 8 Q.B.D 383, *Reg.* v. *Rand,* (1866) L.R. 1 Q.B. 230 and *Reg.* v. *Farrant,* (1887) 20 Q.B.D. 587. That which has to be considered is the effect likely to be produced upon the minds of the public as to the fairness of the administration of justice and this, as Vaugham Williams, L.J. observed in *Rex* v. *London Justices,* (1908) 98 L.T. 519, is a question of degree to be decided in every case. The criterion, generally, is whether justice is seen to be done by a tribunal which satisfies reasonable persons that it is impartial and unbiased. The application of the rule is not restricted to tribunals occupying the position of Courts of Justice. It applies also to administrative bodies exercising quasi-judicial functions but it must be borne in mind, as Wright, J. pointed out in *Reg.* v. *Huggins,* (1895) 1 K.B. at page 565, that decisions by such bodies are very different from cases of decisions by judicial tribunals. The Court ought to be slow to interfere in the former but in the latter ought to interfere on much slighter grounds. This dictum must, I think, be regarded as being of particular cogency in considering the position of Mr. Ebden who was himself not even exercising quasi-judicial functions but was merely enquiring, and making report and recommendation to those who were exercising such functions.

That being the state of the authorities was there any reasonable ground in substance and in fact for suspecting any real bias in Mr. Ebden? In my opinion there was not. As Commissioner of Lands he was probably the most suitable officer for the Governor-in-Council to appoint to inquire and report upon these back-lane schemes. He would be admirably qualified both by his training and by his experience. The evidence shows that the person appointed to perform those duties under section 144 has in the past always been the holder for the time being of that appointment. So long as the Commissioner was not a member of the Board of the Improvement Trust there could be no possible objection on the score of bias. When in 1930 the Commissioner became an *ex officio* member of the Board it would appear from the Objects and Reasons published in the Government Gazette of the 8th May, 1930 that this change in the law was made with a view to his representing the Rural Board on the Improvement Trust. That of course does not preclude the Commissioner from taking part in the deliberations of the Board upon matters such as these back-lane schemes which affect only the Municipal area and have nothing to do with the Rural Board but it appears from Mr. Ebden's affidavit that he took no part in the formulation of the schemes which were prepared by the technical staff, approved by the Chairman and then circulated among the members of the Board. Mr. Ebden like the other members approved the schemes on circulation and was present at the meetings of the Board when the schemes were formally passed. That was the only connection that he had with the schemes, previous to his being called upon to inquire and report. In paragraph 13 of his affidavit Mr. Ebden thus states his position:—

> "My state of mind when called upon to undertake an inquiry is unbiassed, independent and impartial. Up to this point I am committed to an *a priori* view that there should be a back lane, and to nothing more, and I have not concerned myself with imagining objections, for in the inquiry it will be my duty to consider, for submission to the Governor-in-Council, the merits and demerits of the scheme. My *a priori* acceptance of the view that there should be a back lane cannot be construed as a prepossession prejudicial to

> the inquiry, for none of the parties deny that the Singapore Improvement Trust is using its powers legally in deciding to recommend a back lane. They merely object (if they do object) to the way in which it interferes with their property. The inquiry, therefore, resolves itself into a consideration of the objections by owners, and into a question of the best solution in the circumstances having regard to the advantage of the public. I have no preconceptions as to details, and my relations with the executive officers of the Singapore Improvement Trust are not such as to create any embarrassment over disagreeing with their views,—which I not infrequently do, not only over back lane schemes, but over other matters as well."

It has not been suggested that that is not a fair and reasonable statement of Mr. Ebden's position. He admittedly has no pecuniary interest, nor indeed any personal interest whatsoever. His only interest is the general advantage of the public. His preconceived idea that back-lanes were desirable in the areas in question can hardly be said to amount to such bias as would render it improper for him to inquire and report, seeing that the Applicants themselves have never objected to the schemes in principle. They appreciate no doubt that the provision of such back-lanes will probably in the long run improve their property and accordingly their complaints have merely been directed to the details of the schemes, they seeking quite properly to derive therefrom the maximum of advantage to themselves and the minimum of disadvantage. As appears from the affidavits and exhibits and from the Ordinances themselves a very substantial part of the burden and cost of the carrying out of these back-lane schemes falls upon the Improvement Trust and the owners of the property affected cannot help but derive benefit from the resulting improvement in the amenities of the district.

It seems to me that the only really substantial allegation of bias is that Mr. Ebden by reason of his being an *ex officio* member of the Board and having as such formally approved the putting forward of the schemes, was likely to be prejudiced in advance in favour of the details of the schemes as formulated by the Board's technical advisers. But as was pointed out by Blackburn, J. in *Reg.* v. *Rand*, (*supra*) and by Cave, J. in *Reg.* v. *Handsley* (*supra*) the mere possibility of bias is not sufficient; in order to disqualify Mr. Ebden it must be established that he had such a substantial interest in the result as to make it likely that he had a real bias in the matter. In my opinion there is no ground whatever for saying that there was any such substantial interest or likelihood of real bias.

Putting the case at its highest from the point of view of the Applicants it seems to me that the only way in which his impartiality might be said to be affected would be that he might have a tendency to favour the Improvement Trust and in *Reg.* v. *Rand* (*supra*) it was held that the possibility of such a tendency was not of itself sufficient to disqualify justices. As Blackburn, J. explained in the later case of *Reg.* v. *Meyer* (1875), 1 Q.B.D. 173 the Court thought that though there was a possibility of bias in *Rand's* case, yet it was not real, and consequently there was no ground for quashing the certificate of the justices. In fact in the present case I do not think there was any such tendency to favour on the part of Mr. Ebden. The possibility was there but it was not real and in my opinion the first and second grounds of the Applicants' case must fail.

In case, however, I am wrong in that view it is necessary to consider Mr. Laycock's submission that the Applicants must be taken to have waived any right to object to Mr. Ebden on the ground of bias by reason of their conduct having acquiesced in his holding the inquiry and making his report. It was contended that they must have known that he was a member of the Board of the Improvement Trust firstly because the amending Ordinance of 1930 made the Commissioner an *ex officio* member and secondly because their lawyer, Mr. Mundell, had appeared before the Board in another matter in which Mr. Ebden sat as a member. As regards the second of these points the knowledge of a solicitor acquired in other proceedings is not knowledge in these proceedings. To hold otherwise would mean that a client might be damnified by employing a busy practitioner inasmuch as the latter could not be expected to remember all the details of the multifarious proceedings in which he had been engaged (See *Worsley* v. *Scarborough*, 26 E.R. 1025 and *Warrick* v. *Warrick*, 26 E.R. 972). As regards the other point I doubt whether this is a case in which the maxim "Ignorance of the law is no excuse" should be applied. In their affidavits the Applicants state that they were not aware at the time that Mr. Ebden was a member of the Board. This is not a case of a permanently constituted tribunal and I can see considerable force in Mr. Mundell's contention that the Applicants cannot be taken to have known that they had any right to object to the appointment of Mr. Ebden. A party does not waive his right to take an objection when he does not know that he is entitled to it (*Rex* v. *Essex Justices*; *Ex parte Perkins*, (1927) 2 K.B. 475). On the whole, though I confess that I entertain some doubts on the point, I should be disposed to hold that the Applicants have not waived their right to object, if they had any such right; but it follows from my finding that there was no bias that in my opinion there was no right to object and consequently the question of waiver does not arise.

I now turn to the third ground in which it is complained that Mr. Ebden did not conduct his enquiries in an impartial or judicial manner. It is urged against him that he did not hear the

case for the Improvement Trust in the presence of the Applicants nor give them an opportunity of replying to the Trust's objections to the Applicants' proposals. It is a well established rule of law that statutes which encroach on the ordinary rights of the subject, whether as to person or as to property, are subject to a strict construction and that the Courts are presumed to incline to such an interpretation of such statutes as will preserve the subject's rights unless express words or clear implication require the opposite result (See *Brightman* v. *Tate*, 35 T.L.R. at page 211). Section 144 is clearly a statutory provision which does so encroach and as such must be construed strictly. Mr. Mundell contends that it must be taken to give to, or preserve for, the owners whose property is affected the right to be heard orally. The section is taken from section 137 (1) of Municipal Ordinance No. 8 of 1913 which provided that:—

> "The Governor-in-Council may on the request of the Commissioners after giving the owners of lands affected thereby an opportunity of being heard either in person or by counsel order a back-lane————to be laid out."

When the section was re-enacted as section 144 of Ordinance No. 135 (Municipal) the wording was substantially altered and now reads:—

> "The Governor-in-Council may on the request of the Commissioners after receiving such report as he thinks fit to call for from an officer appointed to inquire and report in each case order———"

The old section definitely gave the owner a right to be heard orally and from Land Office Files C.S. 888/1936 and C.S. 653/1916 and Gazette Notifications No. 1084 of 15th October, 1915 and No. 1178 of 5th November, 1915 it is clear that the owners appeared before the Governor-in-Council and stated their cases there. Mr. Mundell contends that the only effect of the alteration in the law in 1919 was to substitute for the hearing before the Governor-in-Council a hearing before some officer appointed by him. He argues that the right to be heard orally remains. I find myself unable to agree with that view. The Legislature deliberately omitted the words "after giving an opportunity of being heard" and effect must be given to that deliberate omission. If it had been intended to preserve such right it would have been a simple matter to insert similar words requiring the officer appointed to give the owners the same opportunity of being heard. It must, I think, be assumed that that opportunity was taken away for some good reason; probably the procedure had been found to be cumbersome and unsatisfactory in practice. The alteration is so striking that it must, I think, be taken that it was deliberately decided in future to leave the officer appointed with an unfettered discretion, not tying him down to any fixed form of inquiry. It is significant that for sixteen years the Commissioners of Lands have conducted their inquiries in substantially the same way as Mr. Ebden conducted these inquiries without apparently any complaint or suggestion being made by the owners that they are still entitled to be heard orally. Under section 144, Mr. Ebden must, I think, be taken to be given a very wide latitude. It is impossible to find any English case on all fours or indeed any case closely resembling the present one but the principles laid down by Viscount Haldane in *Local Government Board* v. *Arlidge*, (1915) A.C. at page 132 afford a useful guide as to how an officer in the position of Mr. Ebden should conduct his inquiry, bearing in mind of course that allowance must be made for the fact that he is not called upon to make a decision whereas the Board in the English case was a tribunal deciding an appeal. Lord Haldane said:—

> "My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the Local Government Board has the duty of enforcing obligations on the individual which are imposed in the interests of the community. Its character is that of an organization with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently. I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education* v. *Rice*, (1911) A.C. 179 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty

to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. If the Board failed in this duty, its order might be the subject of *certiorari* and it must itself be the subject of mandamus.

My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. Provided the work is done judicially and fairly in the sense indicated by Lord Loreburn, the only authority that can review what has been done is the Parliament to which the Minister in charge is responsible. The practice of the department in the present case was, I think, sufficiently shown to have been followed. In accordance with that practice the Board, in order to obtain materials with which to decide, appointed one of its health inspectors to hold a public inquiry. This was in accordance with the rules it had made under the section of the statute which I have quoted and with its usual practice. It is said that the report of the inspector should have been disclosed. It might or might not have been useful to disclose this report, but I do not think that the Board was bound to do so, any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to. The order made was the order of the Board, and so long as the Board followed a procedure which was usual, and not calculated to violate the tests to which I have already referred, I think that the Board was discharging the duty imposed on it in the fashion Parliament must be taken to have contemplated when it deliberately transferred the jurisdiction, first from a Court of summary jurisdiction to the local authority, and then, for the purposes of all appeals, from quarter sessions to an administrative department of the State. What appears to me to have been the fallacy of the judgment of the majority in the Court of Appeal is that it begs the question at the beginning by setting up the test of the procedure of a Court of justice, instead of the other standard which was laid down for such cases in *Board of Education* v. *Rice*. I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunities he actually had."

Similarly, here I do not think that Mr. Ebden was bound to hear the owners orally and, there being no directions in section 144 to the contrary, he was entitled to follow his ordinary procedure. In my opinion he acted without bias and gave to each party the opportunity of adequately presenting their case. In support of the contention that Mr. Ebden ought to have informed the Applicants of the objections of the Improvement Trust to the Applicants' proposals and given them an opportunity of replying thereto, Mr. Mundell relied strongly on the dictum of Lord Loreburn quoted with approval by Lord Haldane in the judgment to which I have just referred. The applicants, he argued, were not given an opportunity to correct or contradict relevant statements prejudicial to their views; namely, the objections to their counter proposals. I have carefully gone through the affidavits and correspondence and I am unable to find any substantial foundation for this complaint. In the case of the Anson Road Back Lane (order of the 7th November 1934) the views of the Improvement Trust were definitely stated to the representatives of the Applicants at an interview arranged by Mr. Ebden on the 3rd August, 1934 and the whole subject was fully discussed as appears from the affidavit of Mr. Langdon Williams, the Chairman of the Trust. The only subsequent statements made by the Trust relevant to this back lane were contained in a letter dated 12th September, 1934 (Exhibit L.L.W. 3) which contains nothing prejudicial to the views of the Applicants. It merely draws attention to a certain definition in the Singapore Improvement Ordinance and states what the Board are prepared to pay for and construct as required by the Municipal Ordinance.

In the case of the South Bridge Road back-lane (Order of the 24th October, 1934) the only communications made by the Chairman of the Improvement Trust to Mr. Ebden in reply to the Applicants' proposals were a letter dated 27th September, 1934, and a minute dated the 1st October, 1934. In the letter he stated that the Board would have no objection to the proposal of the Applicants provided that no objections were made by other persons affected and pointed out that other questions raised were no concern of the Trust. In the minute he agreed that the Trust would pay for certain parts of the land. In conversation, apparently, he stated that his preference was for the back-lane suggested by the Trust.

In the case of the Waterloo Street back-lane (Order of the 14th November, 1934) the only communications made by the Chairman to Mr.

Ebden were contained in minutes in reply to the precis of objections by owners sent to him by Mr. Ebden. In these minutes he merely stated what compensation the Trust would pay and pointed out that for the present he could not go beyond the back-lane which was under reference at the moment.

I can see nothing in these interdepartmental letters and minutes to justify the suggestion that in omitting to inform the Appellants thereof Mr. Ebden failed in any way in his duty to act in an impartial and judicial manner.

The Applicants' third ground accordingly fails.

I now come to the fourth ground which relates only to the Order of the 24th October, 1934 and the South Bridge Road back-lane. The facts upon which the Applicants rely in support of this ground are set out in paragraph 3 of the Affidavit of Shaikh Yahya bin Ahmad Afifi filed on the 13th May, 1935. They allege that the Order was made in contravention of section 144 of the Municipal Ordinance in that Mr. Ebden failed to conduct his enquiry in a fair and judicial manner as is shown by the following facts. At the inquiry which he held in connection with the Anson Road scheme the Applicants suggested that he should at the same time enquire into the scheme affecting the South Bridge Road property but he pointed out that that was a separate matter which should receive separate attention. The Applicants assumed that Mr. Ebden would hold an enquiry in connection with the South Bridge Road scheme later. In fact no meeting for discussion was arranged by Mr. Ebden but on the 21st August, 1934 the Applicants' solicitors wrote to him stating their objections and counter proposals. Further correspondence followed and the Order was made without any meeting having been held. The substance of the Applicants' complaint is that Mr. Ebden ought to have given them an opportunity of appearing before him and of hearing and replying to the case of the Improvement Trust. Mr. Ebden's answer to this complaint is contained in his statement W.S.E. 4 exhibited to his affidavit. From this statement it is abundantly clear that he made an exhaustive investigation before making his report which fairly stated the objections and all material facts. On the 14th September, 1934 the Applicants' solicitors had written saying that they had already made their objections quite clear so that Mr. Ebden had no reason to suppose that they were still desirous of an interview. I have already expressed the view that the Applicants could not claim to be heard orally as of right and that there was no communication from the Chairman of the Improvement Trust of such a nature that Mr. Ebden should in common fairness have given the applicants an opportunity of replying to it. I accordingly hold that there is no substance in this ground of complaint.

The foregoing observations upon the fourth ground really cover the fifth which relates to the Order of the 14th November, 1934. In this case the Applicants' Solicitors in their letter dated the 25th September, 1934 stated that they had no objection to the proposed scheme but suggested (I) that certain corners of property should be paid for and (II) that the scheme should be extended. As regards (I) the Ordinance provides where compensation is to be paid and as regards (II) the Chairman of the Improvement Trust pointed out that the additional back-lane requested by the Applicants was not yet under reference so that the request could not be granted. Under the circumstances I cannot agree with the Applicants' contention that Mr. Ebden's omission to reply to their letter or inform them of the Chairman's comments amounted to a failure to conduct his enquiry in a fair and judicial manner. Accordingly this ground also fails.

Reviewing the case as a whole I feel that the only substantial ground of complaint which the Applicants have been able to advance with any sufficient reason and establish is the fact that the officer appointed to inquire and report happens to have been an *ex officio* member of the Board of the Improvement Trust. If it had not been for that fact I doubt very much whether these proceedings would have been instituted. I do not think that it had ever occurred to anyone that Mr. Ebden's position was such as to render it undesirable that he should be called upon to make these reports. It would no doubt have been better if he had not at the same time been a member of the Board inasmuch as his dual role has laid him open to the criticisms—in my opinion unfounded—which have been levelled at him in the course of this case and it may be that it will be thought desirable to readjust the position so that there shall be no excuse in future for any repetition of such criticisms. However that may be, my considered opinion, after perusing the affidavits and hearing the extremely able arguments addressed to me by counsel on both sides, is that, whatever possibility of bias may have arisen from Mr. Ebden's dual capacity, he was in fact completely unbiassed; that he conducted his inquiry in each case methodically and exhaustively and with the utmost fairness and impartiality, laying before the Governor-in-Council all relevant material which could assist him in making his decision; and, that, if one excepts this one question of his membership of the Board, he has shown himself to be in every way a most proper person to be appointed by the Governor-in-Council to inquire and report under Section 144.

As I have already indicated this mere possibility of bias is not sufficient to entitle the Applicants to the prerogative writ of *certiorari* and accordingly the rule will be discharged with costs.

Solicitors for the Applicants—*Sisson & Delay.*

Solicitors for the Respondents—*Braddell Bros.*

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.